



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF POLICE  
OFFICERS, LOCAL 565, DERRY, N.H.

Complainant

v.

TOWN OF DERRY, NEW HAMPSHIRE

Respondent

CASE NO. P-0702:5

DECISION NO. 83-47

#### APPEARANCES

Representing the Derry Police

Lucy A. Flynn, Esquire

Representing the Town of Derry

Gary W. Wulf

Also in Attendance:

James E. McLaughlin

Chuck Mitchell

Ed. Garone

Paul Collette

#### BACKGROUND

This case arises out of an unfair labor charge brought by the International Brotherhood of Police Officers ("IBPO") against the Town of Derry ("Derry"). The Union alleges that the town has committed an unfair labor practice under RSA 273-A:5, I, (e), which reads, "It shall be a prohibited practice for any public employee: (e) To refuse to negotiate in good faith with the exclusive representative of a bargaining unit, including the failure to submit to the legislative body any cost item agreed upon in negotiations."

On February 3, 1983, Derry, through its authorized bargaining agent, submitted two alternative employment contract proposals to IBPO. Derry informed IBPO that it could select one of the two proposals but could not interchange provisions. IBPO claims that the town submitted the proposals as "final counterproposals" while Derry claims that "tentative proposals" were submitted. On February 4, 1983, IBPO ratified alternative 2. On February 12, 1983, the selectmen rejected the ratified alternative.

The gravamen of IBPO's complaint is that the Derry selectmen committed an unfair labor practice by rejecting the alternative ratified by the union. The union claims that its ratification was an acceptance of the town's contract offer,

and that Derry must honor the alternative as binding and submit the proposed contract to its legislative body, the town meeting. Derry says in response that it is not bound by IBPO's acceptance of one of the alternatives because they were tentative proposals which the selectmen could reject and need not submit to the legislative body.

#### FINDINGS OF FACT AND RULING OF LAW

The Board finds that the alternative proposed by Derry and ratified by IBPO was a contract offer duly accepted by the union. Thus, the selectmen were bound to submit the agreement to the legislative body and committed an unfair labor practice by rejecting the contract. The town's duly authorized agent, by presenting the alternatives as final counterproposals, bound the selectmen to honor either alternative accepted by the union as an agreement subject to ratification. It is a basic tenet of principal-agent law that the agent may bind the principal by his acts. Also, whether the town believed the alternatives to be tentative proposals is irrelevant. An offer is judged by its objective manifestations, "not by the subjective interpretations of the offeror." Gen. Warehousemen of Emp. U. v. J.C. Penney Co., 484 F. Supp. 130, 135 (W.D. Penn 1980). The union acted upon the assertions of the town's bargaining agent that the proposals were the town's final offer, and in doing so acted as any reasonable offeree would have if faced with the facts as presented here.

It is well-established private sector labor law that an employer commits an unfair labor practice if he refuses to sign or accept a bargaining agreement negotiated and concluded on his behalf. NRLB v. Strong, 393 US 357, 359 (1969); H. J. Heinz v. NLRB, 311 US 514, 526 (1941). In the public sector, the situation is not identical because the legislative body of the employer must accept the agreement and has the ultimate authority to reject it. The executive body has no such flexibility however. Here the union ratified a proposal presented to it by the selectmen's agent, and the selectmen then refused to accept it. Such action violates principles of fairness that underlie the collective bargaining process. In finding that an unfair labor practice occurred, the Board refuses to condone the bad-faith bargaining that occurred here.

This case also raises the question of what guidelines parties should follow during the collective bargaining process. Of course, basic contract law governs the negotiating process. Steelworkers v. Bell Foundry, 626 F2d 139 (9th Cir. 1980). Thus an offer by the employer or union begins the formal process, followed by either an acceptance, a rejection, a counteroffer, or a modification of the offer. A counteroffer is a rejection of the original offer. A modification of the offer by the offeror is normally a revocation of the original offer, and the offeree cannot then accept the original offer. Steelworkers, 626 F2d at 141. Once the offeree accepts an offer, that offer becomes an agreement binding on both parties subject to ratification. San Antonio Machine & Supply Co. v. NLRB, 363 F2d 633, 637 (5th Cir. 1966).

Labor law, however, serves to supplement basic contract law in setting guidelines for the collective bargaining process. The parties to negotiations may set guidelines for negotiations and the Board believes parties would be well served to establish such rules. Among such rules which would be helpful in keeping good order would be timing for meetings, duration of sessions, minimum or maximum time for responses to offers or counteroffers, written format for offers, and a system for writing down and initialing or in some other manner establishing what has been agreed to as agreement occurs on particular items. Also relevant to this case, the parties would be well served by a written agreement by the union governing board or the employers executive body that the identified negotiator has authority to act or what limits exist on such authority. Clear rules for

publicity regarding progress of negotiations may also be helpful. While the Board will not dictate such rules or procedures, and the list stated here is not exhaustive, the establishment of clear rules will eliminate confusion and distrust in what is, under best conditions, a sensitive and potentially volatile process.

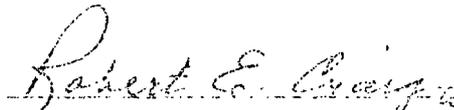
In this case, however, such clarity was lacking and the process resulted in one party violating the rules of proper bargaining procedure.

ORDER

The Board issues the following order:

1. The Derry Selectmen, by failing to submit the agreement ratified by the IBPO to the legislative body, engaged in an unfair labor practice under RSA 273-A:5, I, (e) and the union charge is hereby upheld.

2. The Selectmen are ordered to submit the agreement to the town legislative body for approval or rejection in accordance with the procedures set forth in RSA 273-A.

  
ROBERT E. CRAIG, Chairman

Signed this 26th day of September, 1983.

By unanimous vote. Chairman, Robert E. Craig presiding; members Seymour Osman and James Anderson present and voting. Also present, Evelyn C. LeBrun, Executive Director.